

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

Glacier Northwest d/b/a	Case Nos.	19-CA-203068
CalPortland,		19-CA-211776

Respondent,

and

Teamsters Union Local 174,

Union.

Place: Seattle, Washington

Dates: March 3, 2023

Pages: 1720 through 1777

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

In the Matter of:

GLACIER NORTHWEST D/B/A
CALPORTLAND,

Respondent,

and

TEAMSTERS UNION LOCAL 174,

Union.

Case Nos. 19-CA-203068
19-CA-211776

The above-entitled matter came on for hearing, pursuant to notice, before **JEFFREY D. WEDEKIND**, Administrative Law Judge, at the National Labor Relations Board, Region 19, Jackson Federal Building, South Auditorium, 4th Floor, 915 2nd Avenue, Seattle, Washington 98174, on **Friday, March 3, 2023, 9:02 a.m.**

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Mark Hislop

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E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**General Counsel:**

GC-6

WITHDRAWN

GC-28

1727

1727

Charging Party:

CP-4

1734

NOT ADMITTED

CP-5

1724

1724

CP-6

1759

1763

CP-8

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1754

CP-8-A

1751

1754

CP-9

1764

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Respondent:

R-5

WITHDRAWN

1 P R O C E E D I N G S

2 JUDGE WEDEKIND: Okay. I believe this is day 9 of the
3 Glacier hearing.

4 And a little update on exhibits?

5 MR. LUNDGREN: Yeah. Respondent will withdraw page 2 of
6 Respondent Exhibit 5.

7 JUDGE WEDEKIND: Okay.

8 **(Respondent Exhibit Number 5, page 2 Withdrawn)**

9 JUDGE WEDEKIND: Anything else with respect to exhibits?
10 (Counsel confer)

11 MR. MCCASKEY: Can we go off the record again, for a
12 second?

13 JUDGE WEDEKIND: Sure. Off the record.

14 (Off the record at 9:02 a.m.)

15 JUDGE WEDEKIND: Okay. So we dealt with -- with
16 Respondent Exhibit 5, withdrawing page 2. An amended exhibit,
17 I understand, will be submitted to the court reporter, who will
18 try to substitute that, or add it to the existing uploaded
19 Respondent Exhibit 5.

20 Now, Respondent -- we have an issue with Respondent 24 and
21 25, the transcripts of the audio.

22 And General Counsel, you have a proposal?

23 MR. MCCASKEY: Yes, Your Honor. So we agreed on three
24 audio files. So I'm just going to go through the corrections,
25 one-by-one.

1 So if we're looking at Respondent's Exhibit 24, on page
2 11 -- and this is audio file number 93 -- starting on line 11,
3 if we go down to line 13, it starts by saying, "We are meeting
4 with Jim Marshall". That should actually say, Ken Marshall.
5 And the parties agree on that change.

6 JUDGE WEDEKIND: What -- what does it say? Tim -- what?

7 MR. MCCASKEY: It says, "Jim", and it should say, Ken.

8 JUDGE WEDEKIND: Ken.

9 MR. MCCASKEY: K-E-N.

10 So I'll move on to the next one. So now we're on page 13
11 of Respondent's Exhibit 24, audio file 106. And if we go down
12 to line 2, as it appears on the transcript, it says, "Okay."
13 And it should actually say the name, Dave. So D-A-V-E.

14 MR. PAYNE: Excuse me, Counsel. Would that be after the
15 word "Okay", or --

16 MR. MCCASKEY: No. Rather than -- so cross out "Okay".
17 It should say, Dave.

18 All right. So I'll move on to the last one. So now we're
19 going to audio file 142. This is page 17 of Respondent's
20 Exhibit 24. And so I'll read the original version. On line 3,
21 it says, "4:58, coming back with a blah -- go back. What do
22 you want me to do?" And the corrected version should say,
23 "4:58, coming back with a blow -- blow back. What do you want
24 me to do?"

25 MR. PAYNE: Excuse me -- I want to get it on the screen.

1 JUDGE WEDEKIND: And that was page what of what page
2 file -- video file?

3 MR. MCCASKEY: That was page 17, audio file number 142,
4 starting on line 2 of page 17.

5 JUDGE WEDEKIND: Thank you.

6 MR. MCCASKEY: May I move to the next one?

7 JUDGE WEDEKIND: Yes.

8 MR. PAYNE: Sure.

9 MR. MCCASKEY: Okay. So those are the three that we agree
10 on.

11 Audio file number 137, there was some disagreement on how
12 the transcribing companies put down the audio.

13 So now, we're on page 16. And if we go down to line 17,
14 audio file number 137, as transcribed by Respondent, it reads,
15 "Yeah, looks like crap." And the GC's transcription reads,
16 "Yeah", and then then next three -- the next few words are --
17 are listed as "Indiscernible".

18 So we'd direct the -- the decision-maker to listen to the
19 audio file in this case.

20 JUDGE WEDEKIND: Okay. Thank you. Any problem with that,
21 that -- the way that GC has described it?

22 MR. MOON: Ju -- just to confirm, Your Honor, we agree
23 with General Counsel's description on lines 106, 142, and --
24 what was the other -- what was the first one -- 93. And we
25 disagree on 137 -- audio --

1 MR. MCCASKEY: The first one was --

2 MR. MOON: -- audio file number 137.

3 JUDGE WEDEKIND: Oh, I see.

4 MR. MCCASKEY: Yeah, the first one was 93, if that helps.

5 MR. MOON: Yeah.

6 MR. MERRITT: Yep.

7 JUDGE WEDEKIND: All right. And so do you want to -- the
8 last one -- the -- the disagreement; do you want to submit
9 that -- your -- your version, as an exhibit?

10 MR. MCCASKEY: Yes, Your Honor. We'd like to submit it as
11 GC-28.

12 JUDGE WEDEKIND: Okay. Any objection to receiving that
13 way?

14 MR. MOON: No objection.

15 JUDGE WEDEKIND: All right. So GC-28 will be received.

16 **(General Counsel Exhibit Number 28 Received into Evidence)**

17 JUDGE WEDEKIND: Can you get a copy for everyone?

18 MS. CHEREM: Yep.

19 MR. PAYNE: Your Honor, at some point, we'd like to make a
20 statement here on this issue.

21 JUDGE WEDEKIND: Okay. Go ahead and pass them out and
22 then --

23 All right. Mr. Payne, did you want to --

24 MR. PAYNE: Is this on the record, Your Honor?

25 JUDGE WEDEKIND: I think we're still on the record.

1 MR. PAYNE: Your Honor, the transcripts, I think, were
2 both Respondent Exhibit 24 and 25. 25 had the blue names
3 attached.

4 I want to make sure whatever adjustments are being made to
5 the transcripts, it's made on both exhibits.

6 MR. LUNDGREN: So the -- the three agreed-upon changes
7 should be made to both Respondent Exhibit 24 and Respondent
8 Exhibit 25. And the audio file, to which there is no
9 agreement, would be left to review.

10 JUDGE WEDEKIND: Right. And who's going to submit those?
11 Oh, we're not submitting them.

12 MR. LUNDGREN: Right.

13 JUDGE WEDEKIND: That's just on the record. All right.
14 Thank you.

15 All right. Any other housekeeping matters before we
16 proceed with evidence, witnesses?

17 MR. PAYNE: Nothing from us, Your Honor.

18 MS. CHEREM: I'd just like to confirm with the court
19 reporter that we have all of -- like, all of the exhibits have
20 been offered and admitted. That -- like, are we missing
21 something?

22 THE COURT REPORTER: Well, I have -- the only thing I
23 have -- I have up to 27 previously admitted. And then 28
24 admitted, too.

25 MS. CHEREM: For General Counsel?

1 THE COURT REPORTER: Yeah.

2 MS. CHEREM: Okay. And are there any pending Respondent
3 or Union's exhibits that were marked or otherwise missing?
4 Just to make sure that we're all --

5 THE COURT REPORTER: Well, I have --

6 MS. CHEREM: -- cleaned up before we move on.

7 THE COURT REPORTER: I can go over them, but we have
8 several missing. But there's none that were marked that were
9 not admitted.

10 MS. CHEREM: Okay.

11 THE COURT REPORTER: But I have 11 -- I have Respondent 11
12 through 15, skipped; 18 through 23, skipped; and 26, 27, and
13 28 skipped.

14 MR. LUNDGREN: Yep. And that's fi --

15 THE COURT REPORTER: And we added a 29.

16 MS. CHEREM: Okay.

17 THE COURT REPORTER: And then I just have 17 as withdrawn.

18 MR. LUNDGREN: And that's fine. The -- the more important
19 question is everything that was offered has been admitted?

20 THE COURT REPORTER: Yes.

21 MS. CHEREM: Okay.

22 MR. LUNDGREN: Super. Thank you.

23 MS. CHEREM: Great.

24 THE COURT REPORTER: Except for some of --.

25 JUDGE WEDEKIND: GC Exhibit 6, I have outstanding.

1 MS. CHEREM: Yeah.

2 JUDGE WEDEKIND: Did we discuss that already? Did you
3 mention that already, GC-6?

4 THE COURT REPORTER: I don't have any of the exhibits
5 from --

6 JUDGE WEDEKIND: Right. So that was never -- I don't know
7 if it was offered, but it was never received.

8 MS. CHEREM: Well -- okay. I --

9 JUDGE WEDEKIND: It may have just be kept then because the
10 witness couldn't authenticate it or something; I don't know.

11 MS. CHEREM: I think the witness didn't recognize it, and
12 we dealt with that through a joint exhibit later. So if we
13 need to, I can withdraw it. But I don't know if it was
14 offered. As a cleanup matter, I can withdraw it, though. It's
15 a seniority list.

16 JUDGE WEDEKIND: My notes said that, yeah, you would
17 submit a seniority list in effect in August that was subpoenaed
18 from the company.

19 MS. CHEREM: Because -- that was what we had had at the
20 time, and then we subsequently got one that was closer to the
21 date in question.

22 JUDGE WEDEKIND: And so that's --

23 MS. CHEREM: And so that one was --

24 JUDGE WEDEKIND: Okay.

25 MS. CHEREM: It was just the best we had at the moment we

1 were going to take testimony.

2 So I'm -- if you needed me to withdraw that on the record,
3 I can.

4 JUDGE WEDEKIND: Okay. Well, we're on the record. Are
5 you withdrawing it?

6 MS. CHEREM: Oh, sure. Yes. Yes, the General Counsel
7 withdraws General Counsel 6.

8 **(General Counsel Exhibit Number 6 Withdrawn)**

9 MR. PAYNE: I'm sorry, it's withdrawn?

10 MS. CHEREM: Yes.

11 MR. PAYNE: Okay.

12 JUDGE WEDEKIND: All right. So that's one of the -- I
13 did -- I did see that you were going to possibly substitute an
14 original for GC-23. Do you remember that?

15 MS. CHEREM: No. Give us a second.

16 MR. BERGER: And can I ask the court reporter -- do you
17 have copies of the Charging Party's Exhibits 1 through 3? Or
18 if those were offered in a --

19 THE COURT REPORTER: I don't have anything that was
20 offered previously, before this session.

21 MR. BERGER: I see.

22 THE COURT REPORTER: But it should be uploaded into the
23 system already -- everything that was admitted.

24 MS. CHEREM: Oh --

25 JUDGE WEDEKIND: I don't -- I don't know why I have that

1 notation. Those are --

2 MS. CHEREM: I do know, now that I'm looking at it. I
3 think it was extremely large font in whatever we were provided,
4 and so that's what we --

5 JUDGE WEDEKIND: Oh.

6 MS. CHEREM: It's this.

7 JUDGE WEDEKIND: All right. And if we have that --

8 MS. CHEREM: And Respondent referred to it yesterday as
9 well. I just -- if you have an easily accessible, normal font
10 one, I'm happy to use it. But --

11 MR. LUNDGREN: You know, I think it's a nonissue. Let's
12 just leave what we have.

13 JUDGE WEDEKIND: Okay. I don't -- I don't care about the
14 font. You just thought it didn't look -- didn't look
15 legitimate or something?

16 MS. CHEREM: Well, yeah, I think that there was some
17 question as to how we --

18 JUDGE WEDEKIND: Right.

19 MR. LUNDGREN: It looked strange.

20 MS. CHEREM: -- got to that. Because normally, that's not
21 what the emails looks like. But this is what we had.

22 JUDGE WEDEKIND: So we're okay?

23 MR. LUNDGREN: Yep.

24 MS. CHEREM: Okay.

25 MR. LUNDGREN: And then there's one more issue, Ms.

1 Cherem.

2 MS. CHEREM: Yep.

3 MR. LUNDGREN: Ross, can you pull up JX-5?

4 MR. MERRITT: This is B or do you want the --

5 MR. LUNDGREN: So we do -- we do have colored copies of
6 these in JX-5 then?

7 MR. MCCASKEY: Corrected on the record.

8 MR. LUNDGREN: Oh, you guys corrected it already.

9 MR. MCCASKEY: Yeah.

10 MS. CHEREM: We did, yeah. I think yesterday he sent the
11 email.

12 MR. LUNDGREN: I apologize. I didn't know you did that.

13 MS. CHEREM: Yep. I believe so.

14 MR. MCCASKEY: Yes.

15 MS. CHEREM: I think we're set, yeah.

16 MR. LUNDGREN: Well, we just proved you did.

17 (Counsel confer)

18 MR. PAYNE: Excuse me, Your Honor, are we off the record?

19 JUDGE WEDEKIND: We're still on. Should we go off?

20 MR. PAYNE: Please.

21 JUDGE WEDEKIND: Off -- off the record.

22 (Off the record at 9:25 a.m.)

23 JUDGE WEDEKIND: All right. Respondent, do you have any
24 other witnesses to call?

25 MR. PAYNE: We have no other witnesses, Your Honor. We

1 rest.

2 JUDGE WEDEKIND: All right. Thank you.

3 General Counsel, any rebuttal?

4 MS. CHEREM: No, Your Honor.

5 JUDGE WEDEKIND: How about the Union?

6 MR. BERGER: Yes. I would just like to go off the record
7 and have some time to prepare.

8 JUDGE WEDEKIND: Okay. That's fine. You have one -- one
9 witness you intend to call?

10 MR. BERGER: Correct.

11 JUDGE WEDEKIND: All right. And maybe some exhibits?

12 MR. BERGER: Correct.

13 JUDGE WEDEKIND: All right. Thank you.

14 All right. Let's go off the record.

15 (Off the record at 9:30 a.m.)

16 JUDGE WEDEKIND: So you have some exhibits you would like
17 to offer or discuss, at this point?

18 MR. BERGER: That's correct, Your Honor. We have what's
19 been marked as Charging Party Exhibit 4. And I believe it can
20 be stipulated, this -- this was an email -- if I can approach?

21 JUDGE WEDEKIND: Um-hum.

22 MR. BERGER: It was produced in the State Court
23 litigation. It has a Bates stamp at the bottom. It was not
24 introduced into the -- a joint exhibit, or into court, so
25 the -- the stipulation would, I believe, just be as to the --

1 that it was an authentic document that Glacier had possession
2 of and produced and I would offer it into evidence as Charging
3 Party Exhibit 4, as relevant to the issue of notice prior to
4 the start of the strike, a Glacier individual, who was
5 identified yesterday, on the record, is -- was a party to the
6 email.

7 JUDGE WEDEKIND: Let me just take a look at it, real
8 quick.

9 MR. BERGER: Sure.

10 JUDGE WEDEKIND: And remind me, who is Dave -- Dane
11 Bueller -- Buechler?

12 MR. LUNDGREN: If you want me to speak to this now, Your
13 Honor?

14 JUDGE WEDEKIND: Sure. Well, okay. Go ahead.

15 MR. LUNDGREN: And I have confirmed this as a document
16 that was produced in discovery. That's what I confirmed. Now,
17 I can't say anything -- I don't have any information about it
18 other than that. So let me take you through the document. I
19 can give you some background.

20 JUDGE WEDEKIND: Okay.

21 MR. LUNDGREN: Dane Buechler is a GLY superintendent who
22 was prepared to testify at this hearing, but is not testifying
23 because there was a stipulation that the General Counsel and
24 the Union were relying only upon Joint Exhibit 4 to make their
25 arguments about baselessness.

1 And the document in front of you is not in JX-4, because
2 it was never part of the State Court litigation, other than the
3 fact that it was produced in a little bit of discovery.

4 Ted Herb is the president of GLY, retired, who briefly
5 testified. And then we stopped because of the aforementioned
6 stipulation.

7 Mark Kane -- I do not know who he is. He's not a
8 CalPortland employee, to the best of my knowledge.

9 Jim Davis, I do not know. But to the best of my
10 knowledge, he's not a CalPortland employee.

11 Jim Elliott, same thing; I don't know who he is. And I --
12 to the best of my knowledge, he's not a CalPortland employee.

13 Paul Cronin is a GLY employee who was prepared to testify,
14 and again, we did not call him, because of the aforementioned
15 stipulation.

16 Jason Gill is a name I do not know, and I do not believe
17 is a CalPortland employee.

18 George Lambert was a name that was mentioned, and I think
19 the testimony was, I don't know who he is -- I think it was Ms.
20 O'Regan who says, I don't know who he is. I think he's a sales
21 guy -- or said he was a sales guy or something.

22 The document, as you can see, has a lot of "they" --
23 "they", "there was", "they do not", "they said", et cetera that
24 has -- would require witnesses with knowledge to talk about the
25 document and what any of it means, from a standpoint of

1 relevance.

2 Number two, it -- it isn't relevant to any of the issues
3 in the case, and it shouldn't be just offered into the record
4 as some kind of relevant document without a witness with
5 knowledge to speak to what it is, what it means, et cetera. I
6 could make guesses and assumptions from my knowledge of what
7 GLY did with their communications, where they sat down with
8 Rick Hicks and Ted Herb and had communications, et cetera. I
9 can make assumptions, but Glacier wasn't involved in those
10 conversations -- CalPortland wasn't.

11 And it's also hearsay.

12 MR. BERGER: Okay. If I could just --

13 MR. LUNDGREN: So those are my objections. There's no
14 foundation. There's no (sic) hearsay. There's no relevancy.
15 And we can't get a proper explanation as to any of it without a
16 testifying witness.

17 JUDGE WEDEKIND: Okay. One second, please.

18 Okay. Do you want to address the foundation issue, or
19 what -- what do you want to address first?

20 MR. BERGER: Let me see if I can take the issues in turn.

21 First, I believe there's a suggestion that introducing
22 this document is somehow inconsistent with the stipulation
23 entered into. Again, that -- this confuses the issue of the
24 post-strike events --

25 JUDGE WEDEKIND: Um-hum.

1 MR. BERGER: -- which we stipulated to, versus the pre-
2 strike events, which we have not.

3 Second, Mr. Lambert was positively identified on the
4 record yesterday.

5 The question of how to interpret the document -- first of
6 all, there is foundation in the record, because there is
7 testimony -- some testimony about conversations between -- or
8 individual's knowledge of conversations between Union officers
9 and GLY officers, but also deposition testimony in the State
10 Court record, which is, again, part of the -- part of the joint
11 exhibits that have been entered into evidence.

12 So the overall context and foundation is there. How to
13 interpret it and what weight to give it, that's, you know, for
14 Your Honor to make that assessment.

15 But I don't -- and there's no question as to its
16 authenticity, as -- as well as produced by Glacier to Local 174
17 in the State Court proceedings. And it's clearly relevant to
18 the question of whether Glacier was on notice about the precise
19 method of how the walkout occurred.

20 JUDGE WEDEKIND: As to the hearsay -- so this is in the
21 State Court record already, or -- I was confused on what you
22 started saying.

23 MR. BERGER: This particular document is not in the State
24 Court record, but it was produced in discovery of part of the
25 State Court litigation, as reflected. But I believe the

1 parties agreed the -- above, where it says, Charging Party
2 Exhibit -- that's not a record to -- not referenced to the
3 Court Clerk's papers, which also start, confusingly, with a CP
4 notation. I think it's CalPortland in their Bates numbering
5 system, is my understanding.

6 JUDGE WEDEKIND: Why wasn't it included in the State Court
7 record?

8 MR. BERGER: Because I don't think it was necessarily
9 relevant to the -- the State Court issues that went to -- went
10 to summary judgement were, again, about the post-strike events.
11 So this may have been produced because it was responsive to one
12 of the Union's discovery requests, but was not deemed relevant
13 to the material issues that were before the court. Which I
14 think makes sense, because, again, it was the post-strike
15 events that were material to that case.

16 It is relevant, here, in this proceeding, to the pre-
17 strike events.

18 JUDGE WEDEKIND: Well, what about his comment -- the word
19 "they"? I mean, how is that -- you said, the foundation is
20 already established by the State Court record, but the State
21 Court record doesn't say who "they" is, or are.

22 MR. BERGER: Well -- well, the State Court record is that
23 there is deposition testimony that's attached that talks about
24 the conversation, referenced and anticipated in bullet point
25 number 1, about the Union's potential conduct during the mat

1 pour.

2 We've also heard testimony from Mr. Hislop about what he
3 learned from that conversation between Mr. Herb and Mr. Hicks
4 about avoiding this event -- their eventuality.

5 So I think that foundation is already there.

6 JUDGE WEDEKIND: Do you have any comment on that?

7 MR. LUNDGREN: Sure, I do. That's not really how
8 foundation works, and relevancy is also a part of foundation.
9 And, you know, sort of -- what is the document, what was the
10 purpose of it, why was it sent, what does the -- you know, what
11 does the language -- who's "they", who's "them" -- what does
12 this mean.

13 And then we -- you get all that prefatory information out,
14 and then we decide whether the foundation has been laid. And
15 without a witness, to just throw a document into the record and
16 let everybody speculate about what all of it means or make
17 arguments off of it, it is not proper.

18 There is no foundation. There is no relevancy. And I
19 don't see how it's relevant to -- well, it's not relevant to
20 the 8(a)(3) on the warning letters for GLY mat pour. It's not
21 relevant to whether the State Court batch-concrete claim is
22 preempted. And it's not relevant to whether the warning letter
23 for the August 11th events violated Section 8(a)(1).

24 And the foundation is -- there would be all kinds of
25 questions. You know, I mean, it's hearsay within hearsay, is

1 what it really is.

2 JUDGE WEDEKIND: So why didn't you present this earlier?
3 Why are you waiting until -- till rebuttal, and what does
4 this -- well, answer that question; why didn't present it
5 earlier?

6 MR. BERGER: Well, I mean, I -- I feel that the Union is
7 at a disadvantage because it was a document that it did not --
8 the only reason it ha -- has in its possession, is because it
9 was -- well, I -- I could come through it two ways.

10 A: because it had it in discovery. It was also, I
11 believe, responsive to its subpoena request. And I think that
12 those documents from discovery were reproduced by Glacier. So
13 arguably, this is a subpoena response as well. I don't know
14 how they categorize it. But the Union does not, itself, have
15 an individual who it is capable of producing, to talk about a
16 communication between a third party and Glacier. So we have
17 the document itself, which came through -- through litigation.

18 JUDGE WEDEKIND: But you've had the document for a long
19 time. And you could have subpoenaed someone from GLY to
20 testify, if you thought it was that important.

21 MR. LUNDGREN: And in fact, Ted Herb --

22 JUDGE WEDEKIND: Was here.

23 MR. LUNDGREN: -- actually gave a little testimony.

24 JUDGE WEDEKIND: Was here, yeah. Yeah, he was here.

25 MR. LUNDGREN: And to -- just to make another point,

1 it's -- it's at least double hearsay -- at least -- maybe
2 triple. We'd have to ask the witness about it.

3 And this notion that we could then use another layer of
4 hearsay, you know, from some deposition transcript to try to
5 explain what we think maybe was happening here. I mean, we are
6 way down the lack of foundation rabbit hole, Your Honor.

7 JUDGE WEDEKIND: Yeah, I mean, I -- my major concern is
8 that it wasn't raised until rebuttal. This -- if you put this
9 in, it certainly seems like we're going to need some testimony.

10 And then I would think they would want to -- you might
11 want to have surrebuttal, wouldn't you?

12 MR. LUNDGREN: I mean --

13 JUDGE WEDEKIND: Surrebuttal -- sorry.

14 MR. LUNDGREN: Yeah, well -- yeah.

15 JUDGE WEDEKIND: To respond.

16 MR. LUNDGREN: And -- and I released, you know, my guys.
17 I didn't -- I know Ted Herb is not available.

18 JUDGE WEDEKIND: Right. Right. I mean, I don't think we
19 were anticipating any -- any new evidence like this. This
20 is -- this is all GLY people.

21 MR. LUNDGREN: I mean, I can tell you from a practical
22 standpoint, the only time Ted Herb could have testified was
23 that Tuesday afternoon.

24 JUDGE WEDEKIND: Yeah -- yeah.

25 MR. BERGER: I mean, it was --

1 JUDGE WEDEKIND: Yeah. We had Mr. Herb here.

2 MR. BERGER: I mean, I'm just saying since he -- when he
3 was going to testify, it was then covered by the stipulation.
4 I don't think it would have been proper cross to ask him about
5 things that were not subject to the very limited amount of
6 testimony that he gave, just introducing himself.

7 JUDGE WEDEKIND: Yeah, maybe -- yeah. Perhaps you should
8 have subpoenaed him. But I -- I can see why you might think
9 this is a very important document, and that's why I don't
10 understand why you didn't bring it in earlier. Why all of a
11 sudden, on the last day of hearing, you're throwing this in --
12 into the -- to the mix. I think it -- it does raise -- can you
13 explain that, again, why?

14 MR. BERGER: I -- no. I -- only that the Union -- I -- I
15 think you're -- it's true. We -- it would have, in hindsight,
16 been better to have subpoenaed someone if there was going to be
17 a dispute about authenticity. But that -- yeah. I mean, that
18 said, it's not -- the only witnesses would have been adverse to
19 subpoena, so to that -- I mean, to that extent, I -- I made a
20 call.

21 JUDGE WEDEKIND: Yeah, I think actually questioning Mr.
22 Herb might have been sufficiently related to the testimony that
23 he gave. I mean, you might have -- yeah, might have asked him,
24 who "they" were. You know, we could have asked him about this
25 document. You could have shown him this document -- or any of

1 these other individuals if they were available.

2 So I -- I'd say I'm inclined to -- to reject it outright,
3 just because you waited until rebuttal to do it.

4 MR. BERGER: Okay. Can I ask if the -- I think the
5 process would be to put it into the rejected evidence file
6 for --

7 JUDGE WEDEKIND: Sure.

8 MR. BERGER: -- subsequent consideration?

9 JUDGE WEDEKIND: That's normal. I don't think I have a
10 choice.

11 MR. LUNDGREN: And I don't have an objection.

12 MS. CHEREM: I believe that's the standard practice, so.

13 JUDGE WEDEKIND: Yeah, so is -- is it actually supposed to
14 be marked Charging Party Exhibit 4 in this proceeding?

15 MR. BERGER: Correct.

16 JUDGE WEDEKIND: Okay. And you're offering it, and I'm
17 rejecting it.

18 MR. BERGER: Sounds like it.

19 JUDGE WEDEKIND: And it'll -- it'll go into a rejected
20 exhibit file.

21 **(Charging Party Exhibit Number 4 Rejected)**

22 MR. LUNDGREN: And if I may, just make one point of
23 clarification on it. I believe Union Counsel said GLY was an
24 adverse witness. GLY is not an adverse witness, at this point.
25 I mean, GLY had no statement.

1 JUDGE WEDEKIND: Okay. I hear you. I hear you. You
2 disagree about that.

3 All right. Next.

4 MR. BERGER: The next exhibit -- and I raise this, because
5 Your Honor made a comment when there was a discussion about
6 Glacier's damages, about the potential for introducing publicly
7 available records. I was -- I did not -- I have to admit --
8 understand, necessarily, whether you were referring to taking
9 administrative notice, or introducing it. To the extent you
10 would take judicial notice, I can just offer the URL if it
11 requires entering that into evidence.

12 I do have a fiscal calendar year 2018 report from
13 Glacier's parent company, the one that is publicly traded, and
14 have the URL to share with that. We have debated on the record
15 the relevance and the Union continues to maintain only because
16 Glacier itself chose to introduce evidence about its financial
17 damages that this is responsive and rebuttal evidence to that.

18 JUDGE WEDEKIND: Can you show me what you have there?

19 MR. LUNDGREN: Yeah.

20 MS. CHEREM: Do you want the URL?

21 MR. BERGER: Yes.

22 JUDGE WEDEKIND: I think I mentioned that's a public
23 document just because I assume these are fairly large --

24 MR. PAYNE: Ben --

25 JUDGE WEDEKIND: -- fairly large companies --

1 MR. PAYNE: Ben, can we get a copy?

2 MR. BERGER: Yes.

3 MS. CHEREM: Could you just give him all of the copies?

4 MR. BERGER: Oh, I'm sorry. I just --

5 MS. CHEREM: They're all the same, I think. Can you give
6 him all --

7 MR. BERGER: No. No, they're not.

8 MS. CHEREM: -- the whole stack?

9 MR. BERGER: No.

10 MS. CHEREM: Oh, are they different?

11 MR. BERGER: Yeah. No, all those are down here.

12 JUDGE WEDEKIND: Is Glacier mentioned specifically in any
13 of these or is this just --

14 MR. BERGER: No, not to my knowledge. I mean what is
15 on -- in the record for Glacier is a Supreme Court briefing.
16 It has a certification indicating Taiheiyo's parent
17 relationship to Glacier. I believe Glacier on the first day
18 also stipulated to that relationship.

19 MR. LUNDGREN: Glacier didn't stipulate to anything. I
20 believe Mr. Binam answered Your Honor's --

21 MR. BERGER: That --

22 MR. LUNDGREN: -- question.

23 MR. BERGER: -- that may be.

24 JUDGE WEDEKIND: Okay. And what about CalPortland; is it
25 mentioned? It's not mentioned either?

1 MR. BERGER: Oh, no. And I believe that one is just the
2 tradename of the other.

3 JUDGE WEDEKIND: Is that it? Okay.

4 MR. BERGER: Oh, and I'm sorry, I also have the exhibit --
5 excuse me, the URL link if that's necessary.

6 JUDGE WEDEKIND: Oh, that's fine. Let's just talk about
7 this.

8 Do you have any objection to this coming in?

9 MR. LUNDGREN: I do.

10 JUDGE WEDEKIND: Okay. What's the objection?

11 MR. LUNDGREN: For some of the reasons we've already
12 noted, it doesn't mention Glacier or CalPortland. If I
13 remember Mr. Binam's testimony, he -- he said the publicly
14 traded entity was a parent of a parent of parent. There's -- I
15 mean, we don't even know what this means in relation to any
16 issue in this case whatsoever. And if somebody is going to try
17 to say, well, look at Taiheiyō Cement. Well, who cares? How
18 does that, in any way, have any bearing on any issue about
19 Glacier's losses on August 11th?

20 JUDGE WEDEKIND: Yeah.

21 MR. LUNDGREN: I just don't see it. And I don't think
22 it's necessary. I think it's 403, it's 401, it's relevancy all
23 around. What could you possibly do with this document in any
24 meaningful way without having somebody testify and explain
25 whether it has any relevance or foundational relevance to the

1 case.

2 JUDGE WEDEKIND: I'm inclined not to allow it. What were
3 you offering it as Charging Party 5?

4 MR. BERGER: Correct.

5 JUDGE WEDEKIND: Okay. Yeah, we had testimony that
6 Glacier was not bankrupted by this, that kind of stuff. If you
7 want to try to reach some stipulation with the company that
8 they make over 5 million, 15 million, 500 million, and that's
9 gross split over a year. Just at least something, you know,
10 try that. But --

11 MR. BERGER: Well -- yeah.

12 JUDGE WEDEKIND: -- I don't think --

13 MR. BERGER: I mean, I sought that evidence through a
14 subpoena request and I continue to maintain that it's relevant,
15 but that subpoena request was denied.

16 JUDGE WEDEKIND: That was denied.

17 MR. BERGER: Absent that, I --

18 JUDGE WEDEKIND: Okay.

19 MR. BERGER: -- don't -- I don't think Glacier objecting
20 to relevance is going to stipulate to that.

21 JUDGE WEDEKIND: Okay. I'm going to reject Charging Party
22 5.

23 **(Charging Party Exhibit Number 5 Rejected)**

24 MR. BERGER: I believe that my remaining exhibits are
25 going to be offered through testimony. And can we go off the

1 record?

2 JUDGE WEDEKIND: Sure. Off the record.

3 (Off the record at 10:45 a.m.)

4 JUDGE WEDEKIND: All right. We're going to put Charging
5 Party 5 into the rejected exhibit file as well.

6 And are you ready to call a witness for rebuttal?

7 MR. BERGER: Yes. Charging Party calls Mark Hislop.

8 JUDGE WEDEKIND: Mr. Hislop. Welcome back. You've been
9 with us the whole hearing anyway, right?

10 THE WITNESS: True. Fair enough.

11 JUDGE WEDEKIND: You're still under oath.

12 THE WITNESS: Okay, thank you.

13 Whereupon,

14 **MARK HISLOP**

15 having been previously sworn, was called as a witness herein
16 and was examined and testified as follows:

17 **DIRECT EXAMINATION**

18 Q BY MR. BERGER: Good morning, Mr. Hislop. I'm going to
19 ask you some follow up questions based on testimony that we've
20 heard during Respondent's case-in-chief. Do you recall
21 testimony about a throat-slashing gesture?

22 A I do.

23 Q Okay. Based on your experience in the ready-mix industry,
24 do drivers use certain hand signals as common practice?

25 A Every day, all day.

1 Q Okay. I'm going to show you a document that's been marked
2 as Charging Party Exhibit 8. Do you recognize this image, Mr.
3 Hislop?

4 A I do.

5 Q Okay. How are you familiar with it?

6 A I'm familiar with it that it is a copy of a screenshot
7 from -- from my phone. Also in that it is a sticker that's
8 affixed to my assigned vehicle at CalPortland Glacier
9 Northwest.

10 Q Okay. And how did you originally become familiar with
11 this image?

12 A I think I first saw this particular image as the
13 sticker -- the safety sticker affixed to my assigned vehicle.

14 Q Okay. And is it currently on your vehicle?

15 A It is.

16 Q Where on your vehicle is it located?

17 A It's facing rearward -- rearward on the -- I guess, you
18 could call it the rear bulkhead, the rear of the drum.

19 Q Did you put that image there -- or that -- that sticker
20 there?

21 A I did not.

22 Q To your knowledge, who put it there?

23 A I believe the manufacturer when -- when we were assigned
24 these vehicles, we were told to not alter or remove any safety
25 stickers, and that's been on there ever since.

1 Q I'm going to show you what's been marked as Charging Party
2 8-A. Do you recognize this image, Mr. Hislop?

3 A I do.

4 Q Okay. What is this?

5 A This is also a screenshot from my phone. It's the
6 expanded image -- the first one you gave me was -- I cropped it
7 from -- this was the original screenshot that I acquired from a
8 retail company that sells safety stickers.

9 Q Okay. And is the -- are the images in 8 and 8-A
10 consistent with the image on your vehicle?

11 A It is.

12 Q Okay. And did that sticker exist on your truck vehicle in
13 August 2017?

14 A It did.

15 Q Did these nine images on 8 and 8-A accurately reflect the
16 hand signals that are, you indicated, used throughout the
17 ready-mix industry?

18 A It does.

19 Q Mr. Hislop, do you recall questioning, I believe with Mr.
20 Nordyke, concerning job number codes on the daily report form?

21 A Yes, I do.

22 MR. BERGER: Before I get to that, can I -- I'd like to
23 offer Exhibit 8 and 8-A into evidence. Charging Party Exhibit
24 8 and 8-A.

25 JUDGE WEDEKIND: Objection?

1 MR. LUNDGREN: I'll just speak to the -- off of the
2 exhibits, Your Honor. It's foundation and relevance again.
3 One, this is not the best evidence, to pull out some other
4 document off the internet and say this is like what I have in
5 my truck or whatever. The best evidence is what's in your
6 truck, number one. Number two, Mr. Hislop did not testify
7 about observing any hand signals by anybody during the events
8 in question. In fact, he testified he didn't see any hand
9 signals when asked about it. So what is the relevance of
10 pulling a generic safety thing off the internet and trying to
11 put it into evidence?

12 JUDGE WEDEKIND: Well, it could be a demonstrative
13 exhibit. I agree, a picture of the sticker might have been
14 better, but he's testified what's on his truck and his
15 testimony alone might be sufficient except that we can't see
16 it. So I mean, I -- this -- the second one, the AccuformNMC,
17 apparently a website?

18 MR. BERGER: Yes, sir.

19 JUDGE WEDEKIND: That I'm -- I'm not -- I don't -- we
20 don't know that it came from that company, do we? The sticker?

21 THE WITNESS: I do not know that the sticker on my truck
22 came from that company.

23 JUDGE WEDEKIND: They may just sell stickers -- anyway.
24 So but do you have another objection to Number 8?

25 MR. LUNDGREN: Those were my objections, Your Honor.

1 JUDGE WEDEKIND: Okay.

2 MR. BERGER: I mean if I could address the --

3 JUDGE WEDEKIND: Sure.

4 MR. BERGER: -- one issue. He did testify that the image
5 in 8 and 8-A is consistent with what is on his vehicle.

6 JUDGE WEDEKIND: Right.

7 MR. BERGER: So it's not just similar. He's already said
8 it's the same.

9 JUDGE WEDEKIND: I agree.

10 MR. LUNDGREN: But we're -- I mean, we're prevented from
11 cross-examining him about that statement because we don't have
12 the actual image of what is in his vehicle. I mean, he could
13 say that, but --

14 JUDGE WEDEKIND: Have you ever seen these stickers on
15 other vehicles at the yard?

16 THE WITNESS: Yes, I have.

17 JUDGE WEDEKIND: How many?

18 THE WITNESS: I would say all of the vehicles that are
19 2016 or newer, or vehicles that have been refurbished since
20 2016.

21 JUDGE WEDEKIND: I'm inclined to allow it. There was
22 testimony on your side about the hand slashing gesture. This
23 appears to be rebuttal. He's testified personal knowledge.
24 It's a demonstrative exhibit. C-A came off the website as
25 well, right?

1 MR. BERGER: Yes.

2 JUDGE WEDEKIND: I'll allow it for that purpose.

3 MR. LUNDGREN: Because it's demonstrative, was that the
4 ruling?

5 JUDGE WEDEKIND: Yeah. Yeah. It's not the actual
6 sticker. It's not a picture of the actual sticker, but it's
7 represent -- it's exactly like the sticker, he testified.

8 MR. LUNDGREN: We understand your ruling.

9 JUDGE WEDEKIND: Okay. So I'll allow them both in based
10 on we have explanatory testimony about 8-A, so it's fine. So
11 they're both in.

12 **(Charging Party Exhibit Numbers 8 and 8-A Received into**
13 **Evidence)**

14 Q BY MR. BERGER: Mr. Hislop, do you recall testimony by Mr.
15 Nordyke concerning job number codes on the daily report forms?

16 A I do.

17 Q Okay. Do you have an understanding -- well, let me --
18 let's first take a look. Do you have a copy of Respondent
19 Exhibit 9 in front of you?

20 A I don't think so.

21 MR. BERGER: May I approach?

22 JUDGE WEDEKIND: Yes.

23 MR. LUNDGREN: What is the exhibit number he's showing
24 him?

25 JUDGE WEDEKIND: I believe this is --

1 MS. CHEREM: That should be 9.

2 MR. BERGER: Respondent Exhibit 9. It begins with Mr.
3 Nordyke's spreadsheet.

4 MR. LUNDGREN: And then page number?

5 MR. BERGER: I'm picking a page at random. Let's go with
6 page 4. This is for Richard Bolen.

7 Q BY MR. BERGER: Do you see the column at the top right
8 that says job and then there is a # symbol?

9 A Yes.

10 Q Okay. Do you have an understanding of what that column
11 refers to?

12 A Yes.

13 Q Okay. Can you explain?

14 A It is an indication of our current status during that time
15 frame. Also on delivery tickets, there is a job number. Some
16 drivers put that in during the time frame that they're on that
17 specific delivery, put that job number in there.

18 Q And when you say our status, who's status are you
19 referring to?

20 A The driver's status.

21 Q Okay. And where did these codes come from, to your
22 knowledge?

23 A I believe they were developed from the dispatch office.

24 Q Okay. Are -- do you have personal knowledge of what --
25 how many codes there are?

1 A I'm aware of seven different codes.

2 Q Okay. Can you explain what those seven are?

3 A 10 is pre-trip, 20 is at shop, 40 is retain -- processing
4 retain, 50 is wait to load, 60 is miscellaneous, 70 is travel,
5 and 90 is wash.

6 Q Okay. Are there ever instances where drivers put two
7 numbers within the same field?

8 A Yes. If they -- if they have a block of time where they
9 had multiple statuses, there might be multiple job descriptions
10 within that.

11 Q I'd like to direct your attention -- do you have a copy of
12 Respondent's Exhibit 25 there with you?

13 A I don't think there's any Respondent Exhibits up here.
14 Oh, there are some.

15 Q I can bring up a copy.

16 A All right.

17 MR. BERGER: May I approach?

18 JUDGE WEDEKIND: Yes.

19 THE WITNESS: I see 24.

20 Q BY MR. BERGER: And I'll direct your attention page 10,
21 line 11 through 13.

22 A Okay.

23 Q You see on line 11 there's a reference to Carl?

24 A Yes, sir.

25 Q Are you familiar with any individual affiliated with Local

1 174 by that name?

2 A I am.

3 Q Okay. And who is that person?

4 A Carl Gasca.

5 Q And what is his position?

6 A His position is senior business agent and recording
7 secretary.

8 Q And what position, if any, did he have with the Union in
9 August 2017?

10 A Same.

11 Q To your recollection, was Mr. Gasca present at the Seattle
12 Duwamish facility on the morning of August 11, 2017?

13 A He was.

14 Q We've heard some testimony about concrete cure rates and
15 set times; do you recall that testimony?

16 A I do.

17 Q Is there an optimal temperature to keep concrete at as
18 it's turning in the drum of the truck?

19 MR. LUNDGREN: I'm sorry, I didn't hear the question.

20 Q BY MR. LUNDGREN: Is there an optimal temperature for
21 concrete as its turning in the barrel of the truck?

22 MR. LUNDGREN: My objection is can we get vague -- a
23 little more explanation. I think everything is variable. It
24 depends on all kinds of add mixtures and that kind of thing.
25 Before we just throw out an optimal temperature, I'd like to

1 know what that means.

2 MR. BERGER: Sounds to me like that's a question for
3 cross.

4 JUDGE WEDEKIND: Well, let's -- let's just start. I mean,
5 optimal, I assume means the best -- what does optimal --
6 what -- the best -- optimal for what?

7 Q BY MR. LUNDGREN: Is there a best temperature for ensuring
8 that concrete is delivered in the manner to the specifications
9 of the costumer?

10 A We've been trained primarily through the quality control
11 department that 67 degrees is the target temperature for
12 optimal performance.

13 Q And at that temperature, do you have an understanding of
14 how long concrete takes to set as it turns in the drum?

15 MR. LUNDGREN: Objection. Speculation.

16 JUDGE WEDEKIND: Do you have a what?

17 MR. BERGER: An understanding --

18 JUDGE WEDEKIND: Understanding.

19 MR. BERGER: -- on average how long concrete at that 67
20 degrees takes to set.

21 JUDGE WEDEKIND: Based on his experience?

22 MR. BERGER: Correct.

23 Q BY MR. BERGER: Based on your experience.

24 MR. LUNDGREN: That's also foundation. We've heard lots
25 of testimony that concrete -- how long it takes to set is

1 highly dependent upon mixture, et cetera. And so to just say
2 how long does concrete take to set at 67 degrees --

3 JUDGE WEDEKIND: But we've also had a lot of questions
4 like that that are later broken down. You know, I think we
5 have to start somewhere. I think it's okay to start there.
6 Overruled.

7 Q BY MR. BERGER: And just for clarification, when you say
8 67 degrees, are you referring to outside temperature or inside
9 the drum?

10 A Concrete temperature, Fahrenheit.

11 Q And who -- you said quality control provided that
12 information?

13 A Correct.

14 Q Okay. Do you recall who from quality control?

15 A I believe it was Casey McWaters.

16 Q I think the question was still pending, how long does it
17 take, on average, concrete at that optimal 67 internal degrees
18 to harden -- to set, when it's turning in the drum?

19 A It can take between six and eight hours to get hard.

20 Q I'm going to show you what's been marked as Charging Party
21 Exhibit 6.

22 JUDGE WEDEKIND: If I could just ask a clarifying
23 question. I think there was a question on the table that was
24 answered. The 70 -- 67 degrees Fahrenheit, was that the
25 temperature inside or outside the drum?

1 THE WITNESS: I stated that it would -- the temperature of
2 the concrete, whether inside or outside, the optimal
3 temperature it -- they -- on the jobsites, on occasion, they
4 measure the temperature of the concrete as it -- it's
5 discharged, they take a sample temperature. So inside the
6 drum -- the concrete temperature is the same inside the drum as
7 when it's discharged.

8 JUDGE WEDEKIND: Thank you.

9 Q BY MR. BERGER: Mr. Hislop, looking at Charging Party
10 Exhibit 6, do you recognize this document?

11 A I do.

12 Q Okay. How are you familiar with it?

13 A I recall being given this at a -- at a safety meeting --
14 training meeting.

15 Q Do you recall approximately when?

16 A I think it was in the fall of 2019. I'm not certain. We
17 have monthly meetings. It could have been September or
18 October.

19 Q Could you turn your attention to the chart on page 2?

20 A Okay.

21 Q You see there's one column that says concrete temperature,
22 a second column that says approximate set time, and then under
23 the first column, 6 -- one field says 60 degrees Fahrenheit,
24 another -- the one across says eight hours; do you see that?

25 A Yes.

1 Q Okay. Is that -- is that chart and those two fields
2 consistent with your understanding of concrete set times?

3 MR. LUNDGREN: Your Honor, this isn't rebuttal. He
4 already testified to his understanding of all the issues
5 relating to that concrete when he testified during their --

6 JUDGE WEDEKIND: Yes, but you put on at least one or two
7 more witnesses saying that -- saying something different,
8 apparently.

9 MR. LUNDGREN: I don't think that's the case, but --

10 JUDGE WEDEKIND: I don't remember what he testified
11 originally, but I know your witnesses testified --

12 MR. LUNDGREN: He seems to be just making the same
13 testimony he's already testified to.

14 JUDGE WEDEKIND: Well, that may be, but -- overruled. I
15 think it is rebuttal.

16 It's fine. Go ahead.

17 MR. BERGER: And I'll offer Charging Party's Exhibit 6.

18 JUDGE WEDEKIND: Okay. Any objection to the exhibit?

19 MR. LUNDGREN: Foundation, authenticity, et cetera.
20 Relevance.

21 MR. BERGER: Well, he testified how --

22 MR. LUNDGREN: It's dated September 2019. I mean --

23 JUDGE WEDEKIND: So what further -- let's start one at a
24 time. What further foundation is necessary?

25 MR. LUNDGREN: Foundation about what application this has

1 to any relevant issues on August 2017 -- August 11th, 2017. I
2 haven't heard anything --

3 JUDGE WEDEKIND: Well, the foundation of the document --
4 you're talking relevance now. So foundation of the document,
5 he testified. You have a question about where it came from?

6 MR. LUNDGREN: Well, that would be one. And then two, why
7 are we putting a September 2019 document in is the second
8 question.

9 MR. BERGER: I mean I can ask a follow up question about
10 the second issue.

11 JUDGE WEDEKIND: Okay.

12 Q BY MR. BERGER: Do you -- to your understanding with the
13 information about optimal -- or information about the
14 relationship between concrete temperature and set time be
15 different from August 2017 to September 2019.

16 A I believe it to be the same.

17 JUDGE WEDEKIND: But and also, I think we -- the testimony
18 is not always clear, but the testimony seems to be just in
19 general as to set times. It wasn't, like, how long did it take
20 to set in 2017? It was how long does it take to set. So
21 that's another reason to allow it in on that basis. How about
22 where it came from. Did we get -- what did we get?

23 MR. BERGER: He testified that he received it at a safety
24 meeting.

25 JUDGE WEDEKIND: A safety meeting. Okay. What else?

1 MR. LUNDGREN: Those are my objections.

2 JUDGE WEDEKIND: Okay. But I mean, do you -- are you
3 asking any other foundation that you want to know other than --

4 MR. LUNDGREN: No. It just remains a 2019 document being
5 entered now.

6 JUDGE WEDEKIND: Okay.

7 MR. LUNDGREN: I mean, I don't think he has the foundation
8 to say everything in this document was true in 2017, when it
9 was made in 2019.

10 JUDGE WEDEKIND: I don't know that he testified to that.
11 I do find it's relevant. I'm going to allow it in. It's
12 received.

13 **(Charging Party Exhibit Number 6 Received into Evidence)**

14 Q BY MR. BERGER: Mr. Hislop, to your knowledge, based on
15 your experience, does ambient air temperature affect the
16 concrete's temperature?

17 A Yes.

18 Q Okay. How so?

19 A The concrete temperature -- if the ambient temperature is
20 higher, the concrete temperature is typically higher and rises
21 faster.

22 Q And what is the relationship between the temperature and
23 the set rate of the concrete?

24 A The higher the concrete temperature, the faster it will
25 set.

1 Q Do you recall what the temperature conditions,
2 approximately, were on the morning of August 11, 2017?

3 A I remember them to be fairly mild. At the time -- at the
4 time we went on strike, it was -- I believe it to be low 60s.

5 Q Have you since taken any steps to confirm your memory of
6 the temperature that day?

7 A I have.

8 Q Okay. What steps have you taken?

9 A I looked to a website that provides historical data on
10 date and time and location, temperature-wise.

11 Q Okay. When did you do that?

12 A This morning.

13 Q I'm going to share what's been marked as Charging Party
14 Exhibit 9. Do you recognize this document, Mr. Hislop?

15 A I do.

16 Q Okay. What is it?

17 A It's a screenshot from the website that I inquired the
18 August 11th, 2017 date of this morning.

19 Q Okay. And taking a look at the field that says 6:53 a.m.,
20 is the temperature listed there consistent with your
21 recollection?

22 A It is.

23 Q Do you have any reason to doubt the accuracy of this
24 website?

25 A I don't.

1 Q Okay.

2 MR. BERGER: I offer Charging Party Exhibit 9 into
3 evidence.

4 JUDGE WEDEKIND: What is the website, did you say?

5 THE WITNESS: Timeanddate.com.

6 JUDGE WEDEKIND: Any objection?

7 MR. LUNDGREN: No objection.

8 JUDGE WEDEKIND: It's received.

9 **(Charging Party Exhibit Number 9 Received into Evidence)**

10 MR. BERGER: I have no further questions.

11 JUDGE WEDEKIND: All right. General Counsel

12 MS. CHEREM: Thank you, Your Honor.

13 JUDGE WEDEKIND: Cross?

14 MR. LUNDGREN: Yeah, can we take about a five-minute
15 break?

16 JUDGE WEDEKIND: Sure. 5 minutes, off the record.

17 (Off the record at 11:14 a.m.)

18 JUDGE WEDEKIND: Cross?

19 **CROSS-EXAMINATION**

20 Q BY MR. PAYNE: Mr. Hislop, let me call your attention to
21 Exhibit Charging Party 6, which is the one with the blue
22 heading on it.

23 A Okay.

24 Q Page 2, that contains that chart. Are you with me?

25 A Yes, sir.

1 Q The paragraph, or the provision, maybe looks like about
2 five sentences above that chart, it starts with the words, "In
3 the field, concrete placement." What is concrete placement?

4 A Typically, placement is -- it's -- it's final usage, per
5 se, where -- where they -- typically where the contractor has
6 forms built.

7 Q Okay. And concrete placement usually involves concrete
8 finishers, doesn't it?

9 A Generally.

10 Q Do you know what concrete finishers do?

11 A I guess in an abstract, they -- they level and seal the
12 concrete.

13 Q Yeah, so concrete placement involves these guys we
14 sometimes see out on jobsites, with those long poles, they pull
15 back to pull that concrete, and even it, and level it; isn't
16 that accurate?

17 A Sure. Yes.

18 Q And isn't it also true that you will have concrete
19 placement going on after the truck leaves the site?

20 A I don't believe that to be true. Placement occurs from
21 the truck. Finishing may occur after we're gone.

22 Q Okay. So finishing, these are the guys that are
23 spreading, and -- and screeding. What's a screed, by the way?

24 A Screed is a -- various implements that are used to level.

25 MS. CHEREM: S-C-R-E-E-D, or E-E-T?

1 MR. PAYNE: D like in David.

2 MS. CHEREM: D as in David.

3 MR. PAYNE: Yes.

4 MS. CHEREM: Screed?

5 MR. PAYNE: Yes.

6 MS. CHEREM: Okay. Sorry, that was just new to me.

7 Q BY MR. PAYNE: Their job is to level and smooth the
8 concrete out, generally; isn't that correct, the finishers?

9 A Correct.

10 Q Okay. And there are times when the concrete driver
11 discharges his load, and it's going to be finished, the
12 finishing crew, by people who are screeding, and leveling, and
13 the trucks already taking off and leaving, true?

14 A Yes.

15 Q Okay. So this chart says in the second sentence, after in
16 the field concrete placement, it reads, "Do not begin final
17 finishing while bleed water is present. Don't overwork cool
18 slabs that exhibit delayed setting characteristics." This is
19 all sort of instructions, just above this chart, about
20 finishing crews, and when they should optimally finish the
21 concrete, true?

22 MR. BERGER: Objection.

23 MS. CHEREM: Objection.

24 MR. BERGER: The document speaks for itself.

25 JUDGE WEDEKIND: It sounded like a question though. Are

1 you asking if is -- isn't it instructions for finishing crews?

2 MR. PAYNE: Yes.

3 JUDGE WEDEKIND: Okay, overruled. Is that true or not?

4 A I believe parts of it are specific to finishing crews,
5 parts of it cover other people concerned with concrete.

6 Q BY MR. PAYNE: Parts of it cover other people concerned,
7 what do you mean by that? What parts --

8 A I see --

9 Q -- cover other people concerned?

10 A -- directly below the chart, is instructions for people
11 that are sampling concrete.

12 Q Okay. But I'm talking about from the top of the
13 paragraph, in the field concrete placement, to the bottom of
14 the chart. That really addresses the finishing process,
15 doesn't it?

16 A I would say so, yes.

17 Q Okay. Pardon me?

18 A I would say so, yes.

19 Q Okay, thank you. And did I understand that it's your
20 position that concrete can last up to six hours before it
21 begins to set up?

22 A I think I said harden.

23 Q Harden. What's the difference between harden and set up?

24 A Well, I believe there's been testimony that -- that the
25 chemical process begins as soon as the water hits the cement.

1 And so I'm taking that as beginning to set up.

2 Q Okay.

3 A There's a difference between setting up -- beginning to
4 set up and harden.

5 Q Okay. Six to eight hours, was that to harden or to set
6 up?

7 A That was my opinion on how long it takes to harden.

8 Q Okay. Let me go to this affidavit that we had addressed
9 on the first day of the hearing, when you testified.

10 MR. BERGER: Well, I'm going to object then to this line
11 of questioning as beyond the scope of rebuttal.

12 JUDGE WEDEKIND: I'm not sure what he's going to ask yet.

13 MR. PAYNE: Your Honor, the affidavit says, which I'm
14 going to ask him, that concrete starts hardening -- you can
15 keep the concrete from hardening for about three to four
16 hours --

17 JUDGE WEDEKIND: Okay. Overruled.

18 MR. PAYNE: -- and to that --

19 MS. CHEREM: At a separate practical matter, just a
20 reminder that I need copies of the affidavit back.

21 MR. PAYNE: Yes.

22 MS. CHEREM: And that any -- yeah.

23 MR. PAYNE: You'll get them.

24 MS. CHEREM: Okay.

25 MR. PAYNE: Okay.

1 MS. CHEREM: Just a reminder.

2 MR. PAYNE: So may I approach, and --

3 JUDGE WEDEKIND: Yes.

4 MR. PAYNE: -- hand him the document?

5 JUDGE WEDEKIND: Yes, you may. Sure.

6 Q BY MR. PAYNE: Let me show you the affidavit that you
7 provided to the NLRB, and I'm looking at page 3, the first full
8 paragraph. Do you see that? Can you take a moment and read
9 it?

10 A Okay.

11 Q And is that the statement that you provided to the NLRB?

12 A I believe it is.

13 Q And that's actually the unsigned statement; is that
14 correct?

15 A Right, this was the one that I was asked to make
16 corrections to.

17 Q Okay. And can I have that back for a moment? I just want
18 to point out a sentence. This reads, this is your position
19 taken on April 11th, 2019, right? That's when we gave this
20 statement?

21 A Yes.

22 Q Okay. It reads, "For example, on a one-hour drive to a
23 pour job, by having the drum rotating, you can keep the
24 concrete from hardening for about three to four hours." Is
25 that the statement you gave on this affidavit?

1 A I believe it is.

2 Q And nowhere in your affidavit -- and I'll give it back to
3 you if you need to read the whole thing -- does it say anything
4 about being the contract -- concrete from hardening five to six
5 hours, does it?

6 MS. CHEREM: Objection, Your Honor. Can -- he's being
7 asked a question about his entire affidavit, then we need to
8 give him the opportunity to review it before answering.

9 Q BY MR. PAYNE: Would you like to review the whole
10 affidavit and see if you refer to five or six hours?

11 A May I read --

12 Q Sure.

13 A -- at least the -- the paragraph again?

14 Q Absolutely.

15 A Okay. All right.

16 Q Have you read it?

17 A I did.

18 Q Nowhere in there is there a reference to five to six
19 hours, is there?

20 A Not that I see.

21 Q Okay. And let me ask you about one more statement in this
22 paragraph. Did you read the sentence that says, "Concrete
23 starts to harden in approximately 20 to 30 minutes. But that
24 time is slowed down considerably by keeping the drum rotating."
25 That's the statement that you gave to the NLRB; is that

1 correct?

2 A Yes.

3 Q Okay. So would it be fair to conclude then that concrete
4 does start to harden in approximately 20 to 30 minutes?

5 A I -- I believe I already stated that the chemical process
6 begins immediately.

7 Q Okay.

8 A So yeah, that would be fair to say, that it begins to
9 harden.

10 Q Okay. One more statement, on page 3 I'd like to confirm.
11 Let me ask you to read the last three sentences in that middle
12 paragraph again.

13 MS. CHEREM: John, can you repeat where we're looking?

14 MR. PAYNE: I can't hear you.

15 MS. CHEREM: Can you repeat where we're -- we're supposed
16 to be looking in the affidavit?

17 MR. PAYNE: We're looking on page 3, the large paragraph
18 right in the middle.

19 MS. CHEREM: The large paragraph in the middle.

20 A Okay.

21 Q BY MR. PAYNE: Can I have that back?

22 A Sure.

23 Q Thank you. So in this paragraph, you also stated "It's
24 rare that we will be out on a job for more than 90 minutes."
25 Is it your understanding that that's a correct statement?

1 A I believe that's true.

2 Q Okay.

3 MR. PAYNE: Nothing further, Your Honor.

4 MS. CHEREM: Can we have the affidavit back, please?

5 MR. PAYNE: We don't have to give it back until the
6 hearing is over, and at that point we'll give it back.

7 JUDGE WEDEKIND: Can we just move on. Redirect.

8 MS. CHEREM: Okay.

9 MR. BERGER: Yeah, I have one or two questions.

10 **REDIRECT EXAMINATION**

11 Q BY MR. BERGER: Mr. Hislop, can concrete be safely
12 discharged from the drum of a mixer truck, while it's still in
13 the process of setting up?

14 A Yes, it's what we do every day.

15 Q Okay. And how long would you say from the time of
16 batching, with the drum rotating, can it be safely discharged?

17 A As previously stated, there's many variables. Apparently
18 in April of 2019, I was saying three to four hours, and in the
19 fall of 2019, people told me that it could last six to eight
20 hours on this chart. So I'm -- I'm learning all the time.

21 MR. BERGER: Nothing further.

22 MR. PAYNE: No further questions, Your Honor.

23 JUDGE WEDEKIND: All right, thank you. Thank you, Mr.
24 Hislop.

25 MS. CHEREM: And as a practical matter, I do think I can

1 get the affidavit now that the witness is done testifying. I
2 don't believe you're entitled to hang on to it until the end of
3 the hearing.

4 MR. PAYNE: I can't hear you.

5 MS. CHEREM: I don't -- if I recall correctly, I don't
6 actually believe you're entitled to hang on to that affidavit
7 till the end of the hearing. Should he be recalled, for
8 whatever reason, you're welcome to have the affidavit back.

9 MR. PAYNE: Can they --

10 MR. LUNDGREN: I mean, is that the rule?

11 MS. CHEREM: To my recollection. Your Honor, please
12 correct me if I'm wrong. I thought it was when the witness was
13 done testifying.

14 MR. LUNDGREN: We'll follow -- we'll follow the rule. I
15 think -- do you guys have any more witnesses?

16 MS. CHEREM: No, I think that in this particular case, the
17 end of the hearing and the end of the testimony might coincide
18 very closely in time. I just want to --

19 JUDGE WEDEKIND: I think I do have discretion to allow you
20 to keep it until the end of the hearing.

21 MR. PAYNE: Thank you, Your Honor.

22 MS. CHEREM: Okay.

23 JUDGE WEDEKIND: That's fine. But in general, you know,
24 yes, after the witness.

25 MR. LUNDGREN: Okay.

1 MS. CHEREM: Yeah, that's my recollection.

2 MR. LUNDGREN: Thank you, Your Honor.

3 JUDGE WEDEKIND: Sure. Okay. And further witnesses or
4 exhibits?

5 MR. BERGER: Not from me.

6 JUDGE WEDEKIND: Okay. Anybody else, any -- okay. Thank
7 you very much.

8 MR. PAYNE: Nothing more from us, Your Honor.

9 JUDGE WEDEKIND: All right. Thank you very much. As I
10 indicated, 35 days from now would be April 7th. That's the
11 current deadline, but feel free to file a request with the
12 Judge's Division in San Francisco and the Associate Chief Judge
13 will rule on any requests for an extension of time.

14 MR. LUNDGREN: And we have agreed to the joint request.
15 Do you want us to put it on the record, or is it --

16 JUDGE WEDEKIND: That's fine, sure. Why don't you put it
17 on the record what you've agreed.

18 MS. CHEREM: Sure. I'm happy to do so. Give me a second
19 to pull up the calendar.

20 JUDGE WEDEKIND: I think, unfortunately, Associate Chief
21 Judge Etchingham is in a meeting, and I did talk to him, but he
22 says I can't, you know.

23 MR. LUNDGREN: Oh.

24 JUDGE WEDEKIND: He said he prefers --

25 MS. CHEREM: All right.

1 JUDGE WEDEKIND: -- just file it with me. Okay.

2 MS. CHEREM: All right. The agreement that the parties
3 reached is that we will have a briefing deadline of Friday, May
4 12th. And if any or all parties wish for further extension
5 beyond that date, any such requests must be filed with the
6 Division of Judges by no later than Friday, April 28th.

7 MR. LUNDGREN: We agree.

8 JUDGE WEDEKIND: Okay.

9 MR. LUNDGREN: That's accurate.

10 JUDGE WEDEKIND: Okay. It's all approved. Okay. And
11 I -- I mentioned that to Judge Etchingham, so he's expecting
12 the request.

13 Thank you very much. We made it. I wasn't sure for a
14 while, illness, and absent court reporters, and things like
15 that. But I appreciate your professionalism, and that you got
16 some stipulations done, and congratulations on that.

17 Off the record.

18 **(Whereupon, the hearing in the above-entitled matter was closed**
19 **at 11:37 a.m.)**

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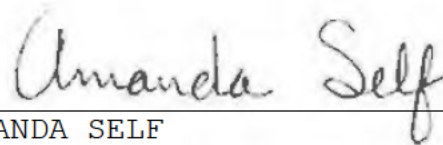
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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 19, Case Numbers 19-CA-203068 and 19-CA-211776, Glacier Northwest d/b/a CalPortland and Teamsters Union Local 174, held at the National Labor Relations Board, Region 19, Jackson Federal Building, South Auditorium, 4th Floor, 915 Second Avenue, Seattle, WA 98174, on March 3, 2023, at 9:02 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



AMANDA SELF

Official Reporter